

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Crescencio Perez-Perez,

Plaintiff

v.

M.E. Ray, Warden of FCI Estill, S.C., as an individual and in his official capacity; C.E. Floyd, Warden of FCI Estill, S.C., as an individual and in his official capacity; E. Rain water, AHSA, as an individual and in her official capacity; Dr. Jose Hernandez, Medical Officer, as an individual and in his official capacity; B. Parina, M.D. Medical Officer, as an individual and in his official capacity; Dr. Ross Rames, M.D. as an individual and in his official capacity; Carolyn V. Rickards, Regional Director, as an individual and in his official capacity; Wendy J. Roal, Administrator National Inmate Appeals, as an individual and in his official capacity,

Defendants.

C/A. No. 9:16-3574-CMC-BM

Opinion and Order

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report"). On March 2, 2017 the Magistrate Judge issued a Report recommending that Plaintiff's complaint be dismissed without prejudice and without issuance and service of process. ECF No. 20. The Magistrate Judge advised Plaintiff of the

procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on March 20, 2017. ECF No. 22.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff alleges deliberate indifference to his serious medical need; however, it is clear from the medical records submitted with his complaint and objections to the Report that Plaintiff was seen often by medical staff for the very injury of which he complains. Plaintiff notes his claim is not one for medical malpractice. Further, Plaintiff's complaint was filed outside the statute of limitations of three years for this action, which is clear from the face of his complaint alleging injury from a fall in 1997. Nothing raised in Plaintiff's objections changes these conclusions. Therefore, this matter is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
March 27, 2017